

# H.R. 1296, THE DISTRICT OF COLUMBIA DISTRICT ATTORNEY ESTABLISHMENT ACT OF 2007

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## HEARING

BEFORE THE

SUBCOMMITTEE ON FEDERAL WORKFORCE,  
POSTAL SERVICE, AND THE DISTRICT  
OF COLUMBIA

OF THE

COMMITTEE ON OVERSIGHT  
AND GOVERNMENT REFORM  
HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

ON

### **H.R. 1296**

TO AMEND THE DISTRICT OF COLUMBIA HOME RULE ACT TO ESTAB-  
LISH THE OFFICE OF THE DISTRICT ATTORNEY FOR THE DISTRICT  
OF COLUMBIA, HEADED BY A LOCALLY ELECTED AND INDEPENDENT  
DISTRICT ATTORNEY, AND FOR OTHER PURPOSES

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APRIL 24, 2008

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## **H.R. 1296, THE DISTRICT OF COLUMBIA DISTRICT ATTORNEY ESTABLISHMENT ACT OF 2007**

**THURSDAY, APRIL 24, 2008**

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON FEDERAL WORKFORCE, POSTAL  
SERVICE, AND THE DISTRICT OF COLUMBIA,  
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,  
*Washington, DC.*

The subcommittee met, pursuant to notice, at 10 a.m., in room 2247, Rayburn House Office Building, Hon. Danny K. Davis (chairman of the subcommittee) presiding.

Present: Representatives Davis of Illinois, Norton, Kucinich, and Marchant.

Staff present: William Miles, professional staff member; Marcus Williams, clerk; Howie Denis, minority senior professional staff member; and Alex Cooper, minority professional staff member.

Mr. DAVIS OF ILLINOIS. The subcommittee will now come to order.

Welcome, Ranking Member Marchant, members of the subcommittee, hearing witnesses and all those in attendance. Welcome to the Federal Workforce, Postal Service, and the District of Columbia hearing entitled, "H.R. 1296, the District of Columbia District Attorney Establishment Act of 2007."

The Chair, ranking member and subcommittee members will each have 5 minutes to make opening statements, and all Members will have 3 days to submit statements for the record. Hearing no objection, so ordered.

I will begin with an opening statement. Good morning, Ranking Member Marchant, subcommittee members and all of you present in the audience today. I would like to welcome you to the subcommittee's hearing on H.R. 1296, the District of Columbia District Attorney Establishment Act of 2007. The legislation being discussed this morning proposes to create an elected and independent Office of District Attorney in D.C., thereby placing the city on equal footing with every other locality and jurisdiction in this Nation.

Currently, the District of Columbia is the only place in our country that has a Presidentially appointed Federal attorney who is responsible for prosecuting not only Federal crimes but local criminal violations as well. This means that the U.S. Attorney for the District of Columbia must simultaneously perform the necessary responsibilities for both Federal and D.C. adult felony violations, a task that is unmatched in any other courtroom around the Nation.

Given the statutory requirements placed on the U.S. Attorney's Office for the District of Columbia, the District's Office of the Attorney General, who acts as the city's official legal authority, is therefore relegated to probing civil litigation that is directed by and against the District government. To this end, the District's Attorney General only prosecutes ordinances, regulations or penal statutes, where the maximum punishment is fine only or imprisonment not exceeding 1 year.

In response to the peculiar arrangement of the District's legal system, on November 5, 2002, citizens of the District of Columbia approved by an overwhelming 82 percent a valid referendum calling for the establishment of a locally elected District Attorney. The city council of the District of Columbia then followed suit with the approval of Bill 14-600, the establishment of an Office of the District Attorney for the District of Columbia Charter Amendment Act of 2002, which sought to amend the D.C. Home Rule Act to permit the citizens of the District to elect a local DA, whose office would assume the obligation tied to prosecuting criminal and civil proceedings.

The legislation was never fully enacted due to a lack of congressional action, which brings us to today and the consideration of H.R. 1296, the District of Columbia District Attorney Establishment Act of 2007. Representative Norton, who I commend for her extensive work and diligence on this issue, introduced the measure at hand on March 1, 2007. H.R. 1296 seeks to restore what the people of the District of Columbia deserve: a locally based, publicly accountable district attorney. This measure is the final step toward removing the muzzle that Congress has put on D.C. residents and in turn, gives them the right that is afforded to every other American citizen: the right to elect a local district attorney who answers and is accountable to the community.

I thank you very much and look forward to hearing today's witnesses, and would now yield to Ranking Member Marchant.

[The prepared statement of Hon. Danny K. Davis and the text of H.R. 1296 follow:]

**STATEMENT OF CHAIRMAN DANNY K. DAVIS  
AT THE SUBCOMMITTEE ON FEDERAL WORKFORCE  
AND POSTAL SERVICE, AND THE DISTRICT OF COLUMBIA  
HEARING ON**

**H.R. 1296, the “District of Columbia District Attorney  
Establishment Act.”**

**April 24, 2008**

Good afternoon Ranking Member Marchant, Subcommittee Members, and all of you present in the audience today. I’d like to welcome you to the Subcommittee’s hearing on H.R. 1296, the “District of Columbia District Attorney Establishment Act of 2007.” The legislation being discussed this morning proposes to create an elected and independent office of District Attorney in D.C., thereby placing the city on

equal footing with every other locality and jurisdiction in the nation.

Currently, the District of Columbia is the only place in our country that has a presidential appointed federal attorney who is responsible for prosecuting not only federal crimes, but local criminal violations, as well. This means that the U.S. Attorney for the District of Columbia must simultaneously perform the necessary responsibilities for both federal and D.C. adult felony violations, a task that is unmatched in any other courtroom around the nation. Given the statutory requirements placed on the U.S. Attorney's office for the District of Columbia, the District's Office of the Attorney

General, who acts as the city's official legal authority, is therefore relegated to probing civil litigation that is directed by and against the District government. To this end, the District's Attorney General only prosecutes ordinances, regulations, or penal statutes where the maximum punishment is fine only, or imprisonment not exceeding one year.

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followed suit with the approval of Bill 14-600, the “Establishment of an Office of the District Attorney for the District of Columbia Charter Amendment Act of 2002,” which sought to amend the DC Home Rule Act to permit the citizens of the District to elect a local DA whose office would assume the obligations tied to prosecuting criminal and civil proceedings. The legislation was never fully enacted due to a lack of congressional action, which brings us to today and the consideration of H.R. 1296, the “District of Columbia District Attorney Establishment Act of 2007.”

Representative Norton, who I commend for her extensive work and diligence on this issue,

introduced the measure at hand on March 1, 2007. H.R. 1296 seeks to restore what the people of D.C. deserve, a locally based, publicly accountable District Attorney. This measure is a vital step towards removing the muzzle that Congress has put on D.C. residents, and in turn gives them the right that is afforded to every other American citizen—the right to elect a local District Attorney who answers and is accountable to the community.

Thank you and I look forward to hearing the testimony of today's witnesses.



110TH CONGRESS  
1ST SESSION

# H. R. 1296

To amend the District of Columbia Home Rule Act to establish the Office of the District Attorney for the District of Columbia, headed by a locally elected and independent District Attorney, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 1, 2007

Ms. NORTON introduced the following bill; which was referred to the Committee on Oversight and Government Reform

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## A BILL

To amend the District of Columbia Home Rule Act to establish the Office of the District Attorney for the District of Columbia, headed by a locally elected and independent District Attorney, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “District of Columbia  
5 District Attorney Establishment Act of 2007”.

1 **SEC. 2. ESTABLISHMENT OF OFFICE OF THE DISTRICT AT-**  
2 **TORNEY FOR THE DISTRICT OF COLUMBIA.**

3 (a) IN GENERAL.—Part F of title IV of the District  
4 of Columbia Home Rule Act (sec. 1–204.91 et seq., D.C.  
5 Official Code) is amended by adding at the end the fol-  
6 lowing new section:

7 “OFFICE OF THE DISTRICT ATTORNEY FOR THE DISTRICT  
8 OF COLUMBIA

9 “SEC. 496. (a) ESTABLISHMENT.—There is hereby  
10 established the Office of the District Attorney for the Dis-  
11 trict of Columbia (hereafter in this section referred to as  
12 the ‘Office’), to be headed by the District Attorney for  
13 the District of Columbia (hereafter in this section referred  
14 to as the ‘District Attorney’).

15 “(b) GENERAL POWERS AND DUTIES.—The District  
16 Attorney shall be the chief legal officer for the District  
17 of Columbia, and in the performance of such duties  
18 shall—

19 “(1) prosecute the local criminal laws of the  
20 District of Columbia, including violations committed  
21 by both adult and juvenile offenders, and perform  
22 any related functions as provided by local law in the  
23 District of Columbia; and

24 “(2) have the authority to perform civil enforce-  
25 ment and other legal functions as provided by local  
26 law in the District of Columbia.

1       “(c) GENERAL QUALIFICATIONS.—

2               “(1) IN GENERAL.—No individual may serve as  
3       District Attorney unless the individual—

4               “(A) is a qualified elector;

5               “(B) is domiciled in the District;

6               “(C) has resided and been domiciled in the  
7       District for at least one year immediately pre-  
8       ceding the day on which the general or special  
9       election for such office is to be held;

10              “(D) holds no other public office for which  
11       he or she is compensated in an amount in ex-  
12       cess of his or her actual expenses in connection  
13       therewith, except that nothing in this clause  
14       shall prohibit any such individual, while District  
15       Attorney, from serving as a delegate or alter-  
16       nate delegate to a convention of a political  
17       party nominating candidates for President and  
18       Vice President of the United States, or from  
19       holding an appointment in a Reserve component  
20       of an armed force of the United States, other  
21       than a person serving on active duty under a  
22       call for more than thirty days; and

23              “(E) is admitted to the practice of law in  
24       the District, is registered with the District of  
25       Columbia Bar as an active practitioner, and has

1 not been and is currently not disbarred or sus-  
2 pended from practice in any jurisdiction..

3 “(2) RESTRICTIONS ON PRIVATE PRACTICE.—

4 The District Attorney shall devote full time to the  
5 duties of the office and shall not directly or indi-  
6 rectly engage in the private practice of law.

7 “(3) FORFEITURE OF OFFICE.—The District  
8 Attorney shall forfeit the office upon failure to main-  
9 tain the qualifications required by this subsection

10 “(d) ELECTIONS; FILLING VACANCIES; INITIAL AP-  
11 POINTMENT.—

12 “(1) ELECTIONS.—The District Attorney shall  
13 be elected on a partisan basis by the registered  
14 qualified electors of the District. The term of office  
15 of the District Attorney shall be four years, except  
16 as provided in paragraph (3), and shall begin at  
17 noon on January 2 of the year following the election.  
18 The District Attorney’s term of office shall coincide  
19 with the term of the Mayor. The first election for  
20 the District Attorney shall take place in 2008.

21 “(2) VACANCIES.—To fill a vacancy for the po-  
22 sition of District Attorney, the Board of Elections  
23 and Ethics shall hold a special election in the Dis-  
24 trict on the first Tuesday occurring more than one  
25 hundred and fourteen days after the date on which

1 such vacancy occurs, unless the Board of Elections  
2 and Ethics determines that such vacancy could be  
3 more practically filled in a special election held on  
4 the same day as the next general election to be held  
5 in the District occurring within sixty days of the  
6 date on which a special election would otherwise  
7 have been held under the provisions of this sub-  
8 section. The person shall take office on the day in  
9 which the Board of Elections and Ethics certifies his  
10 or her election and shall serve as District Attorney  
11 only for the remainder of the term during which  
12 such vacancy occurred.

13 “(3) INITIAL APPOINTMENT.—Not later than  
14 30 days after the date of the enactment of the Dis-  
15 trict of Columbia District Attorney Establishment  
16 Act of 2006, the Mayor, by resolution, shall appoint  
17 a District Attorney who shall serve until succeeded  
18 by an elected District Attorney. The proposed reso-  
19 lution shall be submitted to the Council for a 30-day  
20 period of review, excluding days of Council recess. If  
21 the Council does not approve or disapprove the pro-  
22 posed resolution within the 30-day review period, the  
23 resolution shall be deemed approved.”.

24 (b) CLERICAL AMENDMENT.—The table of sections  
25 of part F of title IV of the District of Columbia Home

1 Rule Act is amended by adding at the end the following  
2 new item:

“Sec. 496. Office of the District Attorney for the District of Columbia.”.

3 **SEC. 3. RESPONSIBILITY OF DISTRICT ATTORNEY FOR THE**  
4 **DISTRICT OF COLUMBIA FOR CONDUCT OF**  
5 **ALL PROSECUTIONS.**

6 (a) IN GENERAL.—Section 23–101, D.C. Official  
7 Code, is amended by striking subsections (a) through (f)  
8 and inserting the following:

9 “(a) Prosecutions for violations of all police or munic-  
10 ipal ordinances or regulations of the District of Columbia  
11 and for violations of all penal statutes of the District of  
12 Columbia in the nature of police or municipal regulations  
13 shall be conducted in the name of the District of Columbia  
14 by the District Attorney for the District of Columbia or  
15 the District Attorney’s assistants, except as may otherwise  
16 be provided in any such ordinance, regulation, or statute.

17 “(b) An indictment or information brought in the  
18 name of the United States in the United States District  
19 Court for the District of Columbia may include charges  
20 of offenses prosecutable by the District of Columbia if the  
21 District Attorney for the District of Columbia consents to  
22 the inclusion of such charges in writing.

23 “(c) An indictment or information brought in the  
24 name of the District of Columbia in the Superior Court  
25 of the District of Columbia may be joined for trial in the

1 United States District Court for the District of Columbia  
2 with an indictment or information brought in that court  
3 if the offenses charged therein could have been joined in  
4 the same indictment or information and if the District At-  
5 torney for the District of Columbia consents to such join-  
6 der.

7 “(d) Nothing in this section shall affect the authority  
8 of the Attorney General of the United States or the United  
9 States Attorney for the District of Columbia to exercise  
10 jurisdiction concerning violations of the laws of the United  
11 States.”.

12 (b) CONFORMING AMENDMENTS.—

13 (1) APPEALS.—Section 23–104, D.C. Official  
14 Code, is amended by striking “Corporation Counsel”  
15 each place it appears in subsections (a)(1), (b), and  
16 (d), and inserting “District Attorney for the District  
17 of Columbia”.

18 (2) PROCEEDINGS TO ESTABLISH PREVIOUS  
19 CONVICTIONS.—Section 23–111(a)(1), D.C. Official  
20 Code, is amended by striking “Corporation Counsel”  
21 and inserting “District Attorney for the District of  
22 Columbia”.

23 (3) DEFINITION OF PROSECUTOR.—Section 23–  
24 501, D.C. Official Code, is amended by striking  
25 “Corporation Counsel of the District of Columbia”

1       and inserting “District Attorney for the District of  
2       Columbia”.

3       (e) EFFECTIVE DATE.—The amendments made by  
4 this section shall apply with respect to violations of Dis-  
5 trict of Columbia ordinances, regulations, and statutes  
6 which occur after the expiration of the 6-month period  
7 which begins on the date of the enactment of this Act.

○

Mr. MARCHANT. Thank you, Mr. Chairman. Thank you for holding this hearing.

I understand that H.R. 1296, introduced by Representative Norton, would amend the D.C. Home Rule Act to create a locally elected D.C. Attorney General. At the present time, in the District of Columbia Home Rule Act, Congress leaves criminal and civil issues that might otherwise be handled by a locally elected District Attorney in the hands of a Presidentially appointed U.S. Attorney. The U.S. Attorney for the District of Columbia prosecutes both Federal and D.C. Code violations.

Coordination of criminal justice activities in the District of Columbia is unique. There are over 30 law enforcement agencies with a presence here. Some are city agencies, such as the Metropolitan Police Department. Some are Federal, such as the Office of U.S. Attorney for the District of Columbia. Historically, the U.S. Attorney's Office has facilitated cooperation for police in areas adjacent to Federal facilities.

Several years ago, the Government Accountability Office noted that we must continually seek to improve communication and coordination among these agencies. So any change to the current governance should be carefully evaluated by Congress as to whether it truly enhances communication and coordination among the different interest groups.

I appreciate the chance to discuss the issues today and look forward to the hearing. Thank you.

Mr. DAVIS OF ILLINOIS. Thank you very much, Mr. Marchant.

Delegate Norton.

Ms. NORTON. Thank you very much, Mr. Chairman, for this hearing and the first hearing held on this bill. I have over several sessions introduced this important bill, as part of my Free and Equal D.C. series. I appreciate the fact that you have afforded us hearings on that series. Indeed, we are making great headway on that process as I speak. The whole series is for the purpose of essentially perfecting the Home Rule process which Congress began in 1974, but leaves many vital functions here that I do not intend to have remain here. I believe that Congress is inclined to move forward to transfer out of its jurisdiction business that is not its business, allowing Congress and the Federal Government to focus where the people of the United States expect them to focus.

I think most Americans would be stunned to find out that the local DA for the District of Columbia is the U.S. Attorney for the District of Columbia. I think this hearing will be important in trying to unfold and unravel some of the issues attending such a unique system. A justice system in any jurisdiction is always of overriding importance. As it turns out, it is part of the jurisdiction of this committee to assure that the justice system meets the highest standards, because most of it is in the hands of the Federal Government.

Mr. Chairman, I am appreciate, very appreciative for your hearings on the Bureau of Prisons, because your hearings, simply by doing oversight, you have already had a profound effect on that part of our justice system, our prisons and the Bureau of Prisons. The President just last week signed an important bill that relates significantly to our justice system, increasing the number of supe-

rior court judges by 3 to 61. There was an unintended result from a bill that assisted our court system in very important ways when Congress created the family court division, with a fixed number of judges dedicated exclusively to children and families as a part of a bill that former Representative Tom DeLay and I wrote after we found some issues affecting our children and the family court, all of whose judges handled these cases.

This bill which the President has just signed and Mr. Chairman, which started with processing through this committee, preserves the number of judges at 58 who handle criminal and civil court matters in the District of Columbia, do not intend the improvements in the family court. We have seen really immense improvements for families and children by having judges dedicated to family issues. We certainly didn't mean, and I can tell you for sure that Representative Delay did not mean to shortchange other important criminal and civil processing matters. The point was to focus on families, not to make other important criminal and civil matters pay for the improvements. Interestingly, the money was always in the budget for the full complement of judges, but it took this committee's authorization to make that active.

The importance of this bill is perhaps best stated by the referendum that the people of the District of Columbia themselves held with 82 percent voting for their own district attorney elected by themselves. I think that referendum and the margin makes the best statement about the importance that the residents of the District of Columbia, and I must say, residents everywhere, attach to public safety and to direct control of the officer entrusted particularly with criminal prosecutions.

The D.C. Council, who responded immediately and enacted or passed their own bill, my bill is essentially based on the referendum and on the D.C. Council bill. We want to correct this, to be kind, anomaly in the Federal system. I want to note before I go further that the U.S. Attorney for the District of Columbia is not here, and I want to know why. Because it goes to the question of accountability. It is not that he would not have come to testify, we have had the U.S. Attorney before this committee regularly, because of our jurisdiction, our sole jurisdiction over the U.S. Attorney.

But Mr. Chairman, the U.S. Attorney for the District of Columbia cannot come because he is an acting U.S. Attorney. And he has been in office a couple of years, but he is an acting U.S. Attorney, because regrettably, I had to oppose his confirmation. He is left in office and I do not oppose his being left in office, but I did not believe that he should have the benefit of confirmation for the U.S. Senate and indicated that to Mr. Leahy, who offers me that courtesy before he goes forward.

The reason really goes to a matter, and I regard it as serious. The U.S. Attorney for the District of Columbia is accountable to people in the Justice Department. This U.S. Attorney appears to me to be a competent man. He lives in the District. He is essentially a patronage appointment. He worked for a former Attorney General. But he and I have worked together, he comes to our neighborhoods.

But we discovered that because of pressure from top officials in the Justice Department of 2 years ago, he hired an assistant U.S. Attorney who had been fired by the Judiciary Committee under the then-Chairman Sensenbrenner. Sensenbrenner of course is still an important member of the minority here, but was chairman of the Judiciary Committee at the time, was fired for using the chairman's name on a letter asking judges to reverse their decisions. There are a number of ethical, not to mention separation of powers violations involved there.

Apparently this lawyer sought to be re-hired by the U.S. Attorney for the northern District of Virginia. They simply refused, based on these violations. But the U.S. Attorney here was put in a position where essentially, I suppose, he would have had to either resign or do what his superiors, who are not the residents of the District of Columbia or any Federal official, said, and he was put in quite an untenable position, he then did something that I thought was good. He placed this person in the appellate division because to place him in the trial division would be to place him in the place where he sought to have effect in his letter to the judges. These were judges of the Seventh Circuit.

So in order to try to reach an accommodation, I asked that person remain in the appellate division and not be put in the trial division, the seat of his concern that led to his violation. And when this matter went all the way up the ladder to the Justice Department, their answer was, well, we reserve the right to place this lawyer anywhere we please.

Therefore, this lawyer sits. He could not and I dare say would not have been hired by any other U.S. Attorney's Office. It goes directly to the matter of accountability. If a DA here were so pressured and it became public, by the way, this has been public, has been covered in the Washington Post, then of course the people could decide on the fitness of a district attorney who hired a person under pressure.

The fact is, Mr. Chairman, that no one is accountable for criminal prosecutions in the District of Columbia. Those prosecutions are at the discretion of the U.S. Attorney for the District of Columbia. No, he goes about his daily business, we are sure in a competent way. But when you consider the importance of criminal prosecutions, particularly to big cities all of which have high crime rates, you can perhaps understand the frustration of the people of the District of Columbia in having nothing to say about the District Attorney.

Mr. Chairman, the U.S. Attorney has death penalty jurisdiction. The District of Columbia is a strong anti-death penalty jurisdiction. Jurisdictions are used to living with, the anti-death penalty jurisdictions are used to living with the U.S. Attorneys who occasionally, because they have the right under Federal law, bring death penalty prosecutions. There have been occasions which, with some criticism, we have been able, I think, to correct whether the U.S. Attorney actually made decisions about whether to prosecute local crimes in Federal or district court, or Federal court, based on his desire to use sentencing, the sentencing guidelines or other matters. We have seen the U.S. Attorney in recent years insist upon trying to get the death penalty here in Superior Court. That is in-

teresting, because we have had Republican and Democratic U.S. Attorneys, and generally, you earn what you can get here, decide how to spend the people's money.

But we had a whole series of attempts to use the death penalty which were turned back almost inevitably by juries and also by court decisions, and yet, they came again. I offer these examples to you because I think a district attorney would have to consider this matter. Obviously, if he were prosecuting crimes here, he could not prosecute under the death penalty, not because we don't have the death penalty in local law.

But the point I am making is that the juries come from the District of Columbia, that the pattern in the District of Columbia is so clear, that to continue to bring such prosecutions, leaving families waiting for resolution of these matters and spending what turn out to be Federal taxpayers' money suggests a lack of accountability, lack of understanding of the jurisdiction in which recent U.S. Attorneys have had to operate.

I do not believe the death penalty matters have arisen under the present U.S. Attorney, so I am not speaking of the present U.S. Attorney, but I am speaking of the last few U.S. Attorneys.

Mr. Chairman, there is no issue of greater importance to the citizens of most jurisdictions than having a say in the prosecution of local crimes. That is why we are very grateful for your decision to allow a hearing on this bill. We are very pleased to have both witnesses. I want to note that Mr. Spagnoletti is a particularly valuable witness, because he has been both a U.S. Attorney, an assistant U.S. Attorney in charge of, or chief of one of the divisions of the U.S. Attorney's Office here, and he has been Attorney General for the District of Columbia. I want to welcome Mr. Boyd and Mr. Spagnoletti.

Mr. DAVIS OF ILLINOIS. Thank you very much, Ms. Norton.

We are going to go to our witnesses, and I am going to introduce the witnesses and then swear them in.

Mr. Eugene Boyd serves as a research analyst for the Congressional Research Service. He is an expert in the field of federalism and economic development policy, government and finance, and has performed numerous studies and projects related to the intersection between Federal Government and the District of Columbia. Welcome, Mr. Boyd.

Mr. Robert Spagnoletti is a senior partner at the law firm of Schertler and Onorato, LLP. Prior to joining the firm, Mr. Spagnoletti served as the first Attorney General for the District of Columbia. As Attorney General, Mr. Spagnoletti represented the District of Columbia in all of its diverse legal matters. Welcome, Mr. Spagnoletti.

It is the tradition of this committee to swear in witnesses. If you would stand and raise your right hands.

[Witnesses sworn.]

Mr. DAVIS OF ILLINOIS. The record will reflect that the witnesses answered in the affirmative.

Gentlemen, we thank you very much, and Mr. Boyd, we will begin with you. As you know, it is customary for 5 minutes to summarize. The lights will go on green 5 minutes, yellow 1 minute, red time to stop. We will have questions at the end.

Thank you very much.

**STATEMENTS OF EUGENE BOYD, ANALYST IN FEDERALISM  
AND ECONOMIC DEVELOPMENT POLICY, GOVERNMENT AND  
FINANCE DIVISION, CONGRESSIONAL RESEARCH SERVICE;  
AND ROBERT J. SPAGNOLETTI, PARTNER, SCHERTLER AND  
ONORATO, LLP**

**STATEMENT OF EUGENE BOYD**

Mr. BOYD. Thank you, Mr. Chairman, for the invitation to testify before the subcommittee.

I am here today to provide a summary of the legislative history of the District of Columbia District Attorney Act, to briefly outline the positions of proponents and opponents of the legislation, and to describe how the proposed legislation, H.R. 1296, would realign the prosecution of local criminal and civil cases in the District of Columbia.

H.R. 1296 would amend the District's Home Rule charter by creating the elected office of District Attorney and transferring to the DA prosecutorial authority for all local criminal laws, as well as the authority over the enforcement of civil laws of the District and civil actions against the District government. The legislative history of the District Attorney Act dates back to June 2002, when the City Council approved a referendum for inclusion in the November 5, 2002 ballot. Eighty-two percent of the votes cast approved of asking Congress to amend the Home Rule Act for the purpose of establishing an independently elected DA.

In June 2003, Representative Norton introduced H.R. 2334, proposing a change in the city charter for the purpose of establishing an elected office of district attorney. No congressional action was taken on the bill. In succeeding Congresses, Representative Norton re-introduced the legislation as H.R. 5800 in the 109th Congress, and H.R. 1296 in the 110th.

In May 2004, then-Mayor Anthony Williams redesignated the Office of the Corporation Counsel for the District of Columbia as the Office of the Attorney General. Subsequently, the City Council approved a measure in February 2005 that amended the D.C. Code to reflect the change. Currently, the District's Attorney General has authority to prosecute violations of D.C. law where the maximum punishment is a fine only or imprisonment not exceeding 1 year; conduct all civil lawsuits filed against the District; and furnish legal opinions in writing to the Mayor. Currently, other major criminal prosecutions are conducted by the U.S. Attorney's Office for the District of Columbia.

Under H.R. 1296, however, the newly created Office of the District Attorney would prosecute all of the criminal laws of the District. Supporters of the locally elected prosecutor maintain that the legislation is consistent with the goal of expanding home rule and self-governance, would create an independent prosecutor directly answerable to the voters, is consistent with the practice of most local governments, and could lead to improvements in law enforcement.

In addition, supporters point to the fact that local prosecutors are overwhelmingly elected to office. A 2002 report by the International

City-County Managers Association found that 93 percent of 876 counties reported that the local county prosecutor was an elected position.

Opponents of the measure to establish the elected position of District Attorney contend that creating such an office could result in significant costs to the District as prosecutions currently handled by the U.S. Attorney may shift to the DA's office. They note that a 2002 report by the CFO estimated the cost of implementing the proposed legislation would be \$57 million. The estimate assumed that portions of the caseload of the U.S. Attorney's Office would be wholly transitioned to local authority.

H.R. 1296 leaves several unanswered questions open for discussion. Most of them would be left for local officials to resolve, but Federal involvement or Federal assistance may be needed under certain conditions. For instance, the following issues may require Federal consideration:

Staffing of the new office. How would the new Office of District Attorney be staffed? Would some of the attorneys now in the Attorney General's office be transferred? What will be the future responsibilities of the Federal attorneys who are handling district cases?

The role of the Attorney General. The bill does not call for the abolition of the Office of the District Attorney General, although it would transfer some, but not all of the duties and responsibilities of that office to the District Attorney. It may leave many still within its authority.

Would the Attorney General's office continue to provide legal opinions and support to the Mayor and executive branch agencies? And finally, funding. Currently, Congress provides an annual appropriation for the operation of the local court system and criminal justice-related activities. Although the bill does not assume Federal financial support for the Office, some observers contend that such support will be consistent with the Federal Government supporting other elements of the criminal justice system.

Conversely, it may be argued that the U.S. Attorney's involvement in the prosecution of local crimes represents a savings to District residents, much like Federal support for court operations and defender services.

Mr. Chairman, this concludes my testimony. I will be happy to answer any questions.

[The prepared statement of Mr. Boyd follows:]

Prepared Statement of Eugene Boyd, Analyst in Federalism and  
Economic Development Policy, Government and Finance Division,  
Congressional Research Service<sup>1</sup>

Before  
The Subcommittee on the Federal Workforce, Postal Service, and the District of Columbia  
April 24, 2008

Statement on District of Columbia District Attorney Act, H.R. 1296

Mr. Chairman, thank you for the invitation to testify before the Subcommittee on the subject of the establishment of a locally elected District Attorney for the District of Columbia. I am here today to provide a summary of the legislative history of the District of Columbia District Attorney Act, to briefly outline the positions of proponents and opponents of the legislation, and to describe how the proposed legislation, H.R. 1296, would realign the prosecution of local criminal and civil cases in the District of Columbia.

Article I, Section 8, Clause 17, of the Constitution gives Congress exclusive authority over the affairs of the District of Columbia. Using this power, the Congress passed the Self-Government and Government Reorganization Act of 1973, which granted the District limited home rule powers. The act allowed citizens to elect both legislative and executive branch officials. It did not allow for the election of a local prosecutor. The Act also outlined how elements of the Home Rule Charter might be changed. For instance, an amendment to the District's charter may be initiated and approved by the City Council and ratified by voters by way of referendum. In this case, Congress has a 35 day period to pass a joint resolution of disapproval to prevent its implementation. If Congress takes no action the charter amendment is approved.<sup>2</sup> Or, Congress may on its own amend the city's home rule charter.<sup>3</sup>

H.R. 1296, if approved by Congress, would amend the District of Columbia Home Rule Charter to establish the elected office of the District Attorney for the District of Columbia. The measure would transfer to the Office of the District Attorney prosecutorial authority for all local criminal laws as well as authority over the enforcement of civil laws of the District of Columbia and civil actions against the government of the District of Columbia. The measure would require that the person elected District Attorney:

- be a qualified voter who has been a resident of the District of Columbia for at least a year;
- hold no other public office;
- be a member of the District of Columbia Bar in good standing; and

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<sup>1</sup> The author gratefully acknowledges the assistance provided by Kenneth Thomas, Legislative Attorney, American Law Division and Jerry Mansfield of the Government and Finance Section of the Knowledge Services Group in compiling information included in this testimony.

<sup>2</sup> 87 Stat. 784 and D.C. Code §1-203.03.

<sup>3</sup> 87 Stat. 813 and D.C. Code §1-206.01

- be prohibited from the private practice of law while in office.

The elected District Attorney would serve a four-year term that would be coterminous with that of the Mayor. The legislation also provides for an initial mayoral appointment, by resolution, within 30 days of its enactment and allows for a 30 day review by the City Council. Failure of the City Council to disapprove the resolution within the 30 day period would constitute their approval of the appointment.

### Legislative History

The legislative history of the District of Columbia District Attorney Establishment Act dates back to June 2002 when the District of Columbia City Council unanimously approved the inclusion of *Advisory Referendum A* as a question on the November 5, 2002 ballot. On November 21, 2002, the Board of Elections and Ethics certified the results of the referendum. Its tabulations showed that 82% of the 109,435 votes cast approved of asking Congress to amend the Home Rule Act for the purpose of establishing an independently elected District of Columbia District Attorney.<sup>4</sup>

On January 7, 2003, the City Council approved D.C. Act 14-578. Much of the language in that legislation is similar to language later included in bills introduced in Congress by Representative Norton in the 108<sup>th</sup>, 109<sup>th</sup>, and 110<sup>th</sup> Congresses. The D.C. bill, introduced as B14-600, the Establishment of the Office of the Attorney General for the District of Columbia Charter Amendment Act of 2002, originally was a detailed blueprint of the organizational structure of the proposed Office of the Attorney General for the District of Columbia. It described the roles and responsibilities of the position of the District's Attorney General, as well as subordinate positions including Deputy Attorney General, Solicitor General, and district attorneys for criminal prosecution and civil proceedings. The bill would have authorized an organization not unlike the structure used by many state governments. In addition, the bill would have abolished the Office of the Corporation Counsel and transferred all of its personnel and property to the proposed Office of the Attorney General.

However, the bill as approved by the City Council was not as detailed or extensive. Rather than calling for the creation of an office with an arrangement similar to states, the D.C. statute, A14-578, focused only on the creation of an independent, elected Office of the District Attorney. In June 2003, Representative Norton introduced H.R. 2334, proposing a change in the city's charter for the purpose of establishing an elected Office of the District Attorney. No action was taken on the bill. In succeeding Congresses, Representative Norton reintroduced the legislation as H.R. 5800 (109<sup>th</sup> Congress), and H.R. 1296 (110<sup>th</sup> Congress).

On May 26, 2004, then Mayor Anthony Williams issued Mayor's Order 2004-92 that redesignated the Office of the Corporation Counsel of the District of Columbia as the Office of the Attorney General.<sup>5</sup> In February 2005, the City Council approved the Technical Amendments Act

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<sup>4</sup> The ballot results may be viewed at [[http://www.dcboee.org/information/elec\\_2002/htmldocs/initiative.shtml](http://www.dcboee.org/information/elec_2002/htmldocs/initiative.shtml)].

<sup>5</sup> Government of the District of Columbia, District of Columbia Register, *Re-designation of the Office of the Corporation Counsel as the Office of the Attorney General*, District of Columbia Register, vol. 51, no. 44, Jun. 11, 2004, pp. 6052-6053. The document may be viewed at [[http://www.amlegal.com/nxt/gateway.dll?f=templates\\$fn=default.htm\\$vid=dc:free](http://www.amlegal.com/nxt/gateway.dll?f=templates$fn=default.htm$vid=dc:free)]. For an (continued...)

of 2004, amending various provisions in the D.C. Code to reflect the re-designation of the Office of the Corporation Counsel as the Office of the Attorney General.

Currently, the Attorney General for the District of Columbia is the chief law official for the District of Columbia. He has authority to conduct all law business of the District not otherwise designated, including the authority to conduct all civil suits instituted by and against the government. He or she is also authorized to furnish opinions in writing to the Mayor.<sup>5</sup>

The Attorney General's authority over criminal matters is commensurate with the authorities which were granted to his predecessor office, the Office of the Corporation Counsel.<sup>7</sup> For instance, like his predecessor, the District's Attorney General has authority to prosecute violations of most ordinances, regulations or penal statutes where the maximum punishment is a fine only, or imprisonment not exceeding one year. He is also responsible for prosecuting violations relating to disorderly conduct and lewd, indecent, or obscene acts.

Currently, other criminal prosecutions are conducted in the name of the United States by the Office of the United States Attorney for the District of Columbia.<sup>8</sup> Under H.R. 1296, the "District of Columbia District Attorney Establishment Act of 2007,"<sup>9</sup> however, the newly-created District Attorney for the District of Columbia would prosecute all of the criminal laws of the District of Columbia, including violations committed by both adult and juvenile offenders.<sup>10</sup>

### **Arguments Offered for and Against an Elected District Attorney**

Supporters of a locally elected prosecutor maintain that the legislation —

- is consistent with the goal of expanding home rule and self-governance,
- would create an independent prosecutor directly answerable to the voters of the District of Columbia,
- is consistent with the practice of most local governments, and
- could lead to improvements in law enforcement.

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<sup>5</sup> (...continued)

overview of the duties of the District of Columbia Attorney General, formerly the District of Columbia Corporation Counsel, see [[http://occ.dc.gov/occ/cwp/view,a,3,Q,530960,occNav,\[31705\].asp](http://occ.dc.gov/occ/cwp/view,a,3,Q,530960,occNav,[31705].asp)].

<sup>6</sup> D.C. Code § 1-301.111.

<sup>7</sup> See, e.g., D.C. Code § 23-101 (conduct of prosecutions). Mayor's Order 2004-92 redesignated the Corporation Counsel of the District of Columbia as the Attorney General for the District of Columbia. See D.C. Code § 1-301.111 *note*.

<sup>8</sup> *Id.* at § 23-101(d).

<sup>9</sup> 110<sup>th</sup> Cong., 1<sup>st</sup> Sess.

<sup>10</sup> H.R. 1296, § 2. Under § 3 of the bill, an indictment or information brought in the name of the United States in the District Court for the District of Columbia may include charges of offenses prosecutable by the District Attorney for the District of Columbia if the District Attorney consents to the inclusion of such charges.

In addition, supporters point to the fact that local prosecutors are overwhelmingly elected to office. According to a 2002 survey by the International City/County Managers Association (ICMA), 93% of 876 counties that responded reported that local county prosecutors are elected. (See attached Table 1.)

Opponents of measures to establish the elected position of district attorney have contended that creating such an office could result in significant costs as prosecutions currently handled by the U.S. Attorney may shift to the District Attorney's office. They note that a 2002 fiscal impact report by the Office of the Chief Financial Officer estimated that the costs, in 2003, of implementing the proposed legislation would be \$57 million.<sup>11</sup> The estimate assumed that portions of the caseload of the U.S. Attorney's Office would be wholly transitioned to local authority.

### **Realignment of Responsibilities**

H.R. 1296 leaves several unanswered questions open for discussion. Most of them would be left for local officials to resolve, but federal involvement or federal assistance may be needed under certain conditions. For instance, the following issues may require federal consideration.

**Staffing of the new office.** Given its legislative mandate, how would the new office of the District Attorney be staffed? Would some of the attorneys now in the office of the District's Attorney General be transferred? What will be the future responsibilities of the attorneys in the Office of the U.S. Attorney who are handling D.C. cases?

**Role of the Attorney General.** The bill does not call for the abolition of the Office of the Attorney General of the District of Columbia. Although it would transfer some, but not all, of the duties and responsibilities of the Attorney General to the District Attorney, it may leave many still within its authority. Would the Attorney General's Office continue to provide legal opinions and support to the Mayor and executive branch agencies?

**Funding.** Currently, Congress provides an annual appropriation for the operation of the local court system and criminal justice related activities. Although the bill does not assume federal financial support for the office, some observers may contend that such support would be consistent with the federal government supporting other elements of the District's criminal justice system. Conversely, it may be argued that the U.S. Attorney's involvement in the prosecution of local crimes represents a savings to the District residents, much like federal support for court operations and defender services.

Mr. Chairman, this concludes my testimony. I will be happy to answer any questions.

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<sup>11</sup> The fiscal impact statement may be viewed at [[http://app.cfo.dc.gov/services/fiscal\\_impact/pdf/fall02/B%2014-600%20District%20District%20Attorney.pdf](http://app.cfo.dc.gov/services/fiscal_impact/pdf/fall02/B%2014-600%20District%20District%20Attorney.pdf)].

**Table 1. Survey Question from ICMA: Are the following department heads Appointed or Elected; Prosecutor?**

Classification	Total	Appointed		Elected	
	No.	No.	% of total	No.	% of total
	876	63	7.2%	813	92.8%
Population group					
Over 1,000,000	8	1	12.5%	7	87.5%
500,000-1,000,000	16	2	12.5%	14	87.5%
250,000-499,999	28	1	3.6%	27	96.4%
100,000-249,999	102	4	3.9%	98	96.1%
50,000-99,999	121	8	6.6%	113	93.4%
25,000-49,999	172	15	8.7%	157	91.3%
10,000-24,999	225	17	7.6%	208	92.4%
5,000-9,999	124	8	6.5%	116	93.5%
2,500-4,999	49	4	8.2%	45	91.8%
Under 2,500	31	3	9.7%	28	90.3%
Geographic region					
Northeast	31	7	22.6%	24	77.4%
North Central	336	21	6.3%	315	93.8%
South	338	22	6.5%	316	93.5%
West	171	13	7.6%	158	92.4%

Source: International City/County Managers Association Survey 2002

Mr. DAVIS OF ILLINOIS. Thank you very much. We will proceed to Mr. Spagnoletti.

**STATEMENT OF ROBERT J. SPAGNOLETTI**

Mr. SPAGNOLETTI. Thank you, Mr. Chairman, members of the subcommittee. It is a pleasure to be here today to discuss H.R. 1296.

As you noted before, I was an Assistant U.S. Attorney for the District of Columbia from the year 1990 until 2003, and served as the Chief of the Sex Offense and Domestic Violence section in that office. I then had the pleasure of serving as the Attorney General for the District of Columbia from 2003 through 2006 under Mayor Anthony Williams, and began my tenure when that office was known as the Office of Corporation Counsel.

The Office of the Attorney General for the District of Columbia is unique. Appointed by the Mayor of the District, the AG has the statutory obligation to conduct the District's "law business." Thus, in addition to handling all the District's civil litigation, the Office of the Attorney General is responsible for virtually every aspect of the city's law practice, including real estate tax, bankruptcy, child protection, child support, domestic violence, anti-trust consumer protection and all the city's appellate work. The Office also shares criminal prosecution authority with the Office of the U.S. Attorney.

The District's Attorney General is unique in other ways. It is one of the few State-level chief legal officers who is appointed by the Chief Executive. Most Attorneys General in States are elected. The District's Attorney General does not serve for an established term. The District's Attorney General could be removed by the Mayor at will and without cause, and there are no minimum qualifications for being the appointed Attorney General, including no requirement that the Attorney General be licensed to practice law in the District of Columbia.

H.R. 1296 would significantly change the way that the District's chief legal officer is selected and the scope of his or her responsibilities by transferring those powers from the U.S. Attorney's Office to prosecute local offenses to the new District Attorney. Having served in both offices, I am pleased to offer my thoughts on the bill.

First, I fully support the concept of an elected District Attorney for the District of Columbia, a position shared by 80 percent of my fellow District residents, who voted in favor of an elected District Attorney in the referendum. Indeed, there is no logical reason why District residents should not be able to elect their chief legal officer in the same manner as almost every other State. Forty-three States conduct State-wide elections for their State Attorneys General.

The Attorney General for the District of Columbia is appointed by the Mayor and serves entirely at his pleasure, subject to removal for any or no reason. This creates a complicated dynamic between the Mayor and the Attorney General where every decision made by the chief legal officer may be influenced by the Mayor under the explicit or implied threat of being removed from that position.

A District Attorney independently elected by the citizens of the District would enjoy greater independence from the Mayor, would

be free to zealously represent the interests of the District of Columbia, and would be held accountable directly to the public. H.R. 1296 would also unify local criminal prosecutions. Criminal prosecution authority for local crimes is currently divided between the Office of the U.S. Attorney and the Office of the Attorney General. The division is based on historic and technical grounds and not a logical division of criminal offenses.

The AG's office prosecutes traffic code violations, local tax crimes and a number of quality of life misdemeanor offenses where the penalty is jail or a fine but not both, where the penalty is a year or less. The AG also prosecutes all juvenile delinquency cases. Whereas, the U.S. Attorney's Office prosecutes all those offenses for which it had responsibility at the time Home Rule was enacted, which are most of the felony charges and serious misdemeanors where the penalty is jail and/or a fine.

This unusual division of charges and responsibilities leads to unusual results. First, one offense can lead to charges by both offices in the same courthouse. Second, the division dictates unusual results in case management. It is not unusual, for example, for the Attorney General of the District of Columbia to seek immunity from prosecution for a witness from the U.S. Attorneys' Office from the District of Columbia for local offenses, when the District has need for that witness's testimony. These complications would not exist under a unified chief prosecutor.

I would recommend, however, that the position created by H.R. 1296 be called Attorney General for the District of Columbia, rather than the District Attorney. The term District Attorney is generally used for a jurisdiction's chief prosecutor. Here, as described in the bill, the new office would comprise all of the existing civil, family, transactional and criminal functions of the current Attorney General and add the local prosecution authority of the U.S. Attorney. The combined civil and criminal authority is more akin to States' Attorneys General such as Rhode Island, Delaware and Alaska, which have the combined powers, than a pure District Attorney, which generally is criminal prosecution.

The minimum qualifications in H.R. 1296 are moderate and reasonable, given that there are no qualifications at the moment. I would urge the subcommittee, Members and staff to take a look at my testimony for some of the logistical difficulties in implementing this bill. There is a huge financial implication for this for the District by subsuming the responsibilities of the U.S. Attorney's Office as well as logistical issues dealing with the inter-relationships among those parts of the local criminal justice system that are funded by the Federal Government.

I see my time has run, and I am happy to answer any questions.  
[The prepared statement of Mr. Spagnoletti follows:]

CONGRESS OF THE UNITED STATES  
HOUSE OF REPRESENTATIVES

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COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

SUBCOMMITTEE ON FEDERAL WORKFORCE, POSTAL  
SERVICE AND THE DISTRICT OF COLUMBIA

HEARING ON H.R. 1296

“DISTRICT OF COLUMBIA DISTRICT ATTORNEY  
ESTABLISHMENT ACT OF 2007”

TESTIMONY OF ROBERT J. SPAGNOLETTI



Robert J. Spagnoletti  
Schertler & Onorato, LLP  
601 Pennsylvania Avenue, NW  
North Building, 9th Floor  
Washington, DC 20004-2601  
(202) 628-4199  
(202) 628-4177 *fax*  
[rspagnoletti@schertlerlaw.com](mailto:rspagnoletti@schertlerlaw.com)  
[www.schertlerlaw.com](http://www.schertlerlaw.com)

## I. INTRODUCTION

Good morning, Chairman Davis and members of the Subcommittee on Federal Workforce, Postal Service and the District of Columbia. I am Robert J. Spagnoletti, a partner with the law firm of Schertler & Onorato, and I am here this morning to testify on H.R. 1296, the District of Columbia District Attorney Establishment Act of 2007 ("H.R. 1296" or the "Bill").

As you can see from my resume,<sup>1</sup> I was an Assistant United States Attorney for the District of Columbia from 1990 until 2003, and Chief of the Sex Offense and Domestic Violence Section for eight years. In that capacity, I was responsible for prosecuting all of the domestic violence, sexual abuse, and child maltreatment criminal offenses that occurred in the District of Columbia.

I then had the pleasure of serving as the Attorney General for the District of Columbia from 2003 through 2006, under Mayor Anthony Williams, and actually began my tenure when the Office was known as the Office of the Corporation Counsel. In 2004, the name of that Office was changed to the Office of the Attorney General to more accurately reflect its state-like role and responsibilities.

The Office of the Attorney General for the District of Columbia is unique. Appointed by the Mayor of the District of Columbia, the Attorney General has the statutory obligation to conduct the District's "law business," by exercising more than 300 mandatory and discretionary duties that in most states fall to city and county attorneys as well as state Attorneys General. Thus, in addition to conducting all of the District's civil litigation, the Office of the Attorney General is responsible for virtually every aspect of the city's law practice. This includes real estate, tax, bankruptcy, child protection, child support, domestic violence, mental health, economic development, juvenile delinquency, antitrust, consumer protection, and all of the city's appellate work. The Office also shares criminal prosecution authority with the Office of the United States Attorney for the District of Columbia ("DC USAO"), handling more than 10,000 criminal matters annually.

The District's Attorney General is also unique in other ways. For example:

- it is one of the few state-level chief legal officers who is appointed by the chief executive, whereas most Attorneys General are elected;
- the District's Attorney General does not serve for an established term;
- the District's Attorney General can be removed by the Mayor, at will, and without cause; and
- there are no minimum qualifications for being appointed Attorney General, including no requirement that the Attorney General be licensed to practice law in the District.

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<sup>1</sup> See Exhibit 1, attached hereto.

H.R. 1296 would significantly change the way that the District's chief legal officer is selected and the scope of his or her responsibilities by transferring local prosecution authority from the DC USAO to the District. Having served in both offices, I am pleased to offer my perspective on the Bill.

## II. THE BILL

H.R. 1296 would establish the Office of the District Attorney for the District of Columbia and vest in that Office the full authority of the current Attorney General for the District of Columbia and all of the local prosecution authority of the United States Attorney for the District of Columbia.<sup>2</sup> The District Attorney would be elected in a partisan, city-wide election, and serve a four-year term concurrent with the Mayor of the District of Columbia. The Bill sets forth minimum qualifications for the position which include: (1) residency in the District for one year; (2) the status of a qualified elector; and (3) active admission to the District of Columbia Bar.

The Bill further permits charge-sharing by the District Attorney with the U.S. Attorney, and preserves the authority of the United States Attorney to enforce federal laws in the District of Columbia.

## III. DISCUSSION OF THE BILL

### A. THE CHIEF LEGAL OFFICER FOR THE DISTRICT OF COLUMBIA SHOULD BE ELECTED BY ITS CITIZENS

I fully support the concept of an elected District Attorney for the District of Columbia – a position shared by more than 80% of my fellow District residents who voted in favor of an elected District Attorney in a 2002 referendum. Indeed, there is no logical reason why District residents should not be able to elect their chief legal officer in the same manner as almost every other state. Forty-three states conduct state-wide elections for their state Attorney General.<sup>3</sup> Counties and municipalities across the country select their District Attorneys and State's Attorneys by way of election. Election by the public is the most effective means of holding a public official directly accountable to the people he serves.

The Attorney General for the District of Columbia is virtually unique in that he is appointed by the Mayor and serves entirely at the Mayor's pleasure, subject to removal for any - or no - reason. This creates a complicated dynamic between the Mayor and the Attorney General where every decision made by the chief legal officer may be influenced by the Mayor under the explicit or implied threat of being removed from the position.

<sup>2</sup> The District of Columbia is one of the few remaining jurisdictions where federal prosecutors are responsible for enforcing local laws. Indeed, last year the DC USAO filed more than 19,000 adult criminal cases arising out of violations of local District of Columbia laws. See District of Columbia Courts 2007 Statistical Summary, "New Case Filings," p. 8., available at [www.dccourts.gov](http://www.dccourts.gov).

<sup>3</sup> State Attorneys General Powers and Responsibilities, National Association of Attorneys General, Chapter 2 (Draft 2008).

The Attorney General is required to represent the interests of his client - the people of the District of Columbia - but who speaks on behalf of the client changes from matter to matter and from subject to subject. In many instances, the District speaks through the Mayor and his agency directors. Particularly in areas relating to civil and family law, the Attorney General represents and defends the policy choices made by the Mayor and his appointees. But there are often matters where the Attorney General must represent the interests of the District as a whole and such representation may come into conflict with the political interests of the Mayor and his Executive Office. The clearest example of this is in the context of criminal prosecution where the decision to bring and pursue charges must be free from political influence.

A District Attorney independently elected by the citizens of the District of Columbia would enjoy greater independence from the Mayor, and would be free to zealously represent the interests of the District of Columbia. It gives the District's chief legal officer the confidence to say "no" to the Mayor when the law or ethics so require, without fear of being fired.

#### B. THE BILL WOULD UNIFY LOCAL CRIMINAL PROSECUTIONS

As described above, criminal prosecution authority for local crimes is currently divided between the Office of the Attorney General and the DC USAO. The division is based on historic and technical grounds, not a logical division of criminal offenses.

- The Office of the Attorney General prosecutes all traffic code violations, local tax crimes, and a number of quality of life misdemeanor offenses where the penalty is jail or a fine, but not both (such as indecent exposure, possession of an open container of alcohol, and possession of an unregistered firearm). In recent years, the Council for the District of Columbia has enacted new offenses – including some felonies - where the Attorney General is the designated prosecutor. These crimes include fleeing a police officer and contributing to the delinquency of a minor. The Attorney General also prosecutes all juvenile delinquency cases.
- The DC USAO prosecutes all those local offenses for which it had responsibility at the time home rule was enacted. These offenses include most of the felony charges, and serious misdemeanors where the potential penalty is jail and a fine. Because the DC USAO handles most felony charges, the grand jury sits inside of the USAO building at 555 Fourth Street, N.W. The DC USAO also has the ability to charge (without further court action) certain 16 and 17 year-olds as adults when they are charged with very serious violent crimes.

This unusual division of charging responsibilities leads to some unusual results.

First, one offense can lead to charges by both offices, in the same courthouse. For example, a defendant arrested with an unlicensed and unregistered gun can be charged by both the Attorney General (for an unregistered pistol) and the USAO (for carrying a concealed pistol). A defendant arrested during an act of prostitution can be charged by

both the Attorney General (for indecent exposure) and the USAO (for sexual solicitation). No reasoned basis exists for such distinctions.

Second, the division dictates unusual results in case management. It is not unusual, for example, for the Attorney General for the District of Columbia to seek immunity from prosecution by the USAO for local offenses when the District has need of a witness' testimony. In other matters, the USAO has been reluctant to share information with the District about local cases under investigation for fear of compromising their evidence.

Third, charging decisions made by the USAO are done in accordance with federal, as opposed to local, priorities. Although in recent years the U.S. Attorney for the District of Columbia has done an effective job collaborating with local leaders on important issues of public safety, it is always the case that the U.S. Attorney answers to the United States Attorney General and the President in terms of prosecution and resource priorities. When those priorities conflict with the immediate needs of the citizens of the District of Columbia, the federal directives will always prevail.

These complications would not exist under a unified chief prosecutor.

C. THE POSITION IS MORE PROPERLY REFERRED TO AS THE  
ATTORNEY GENERAL FOR THE DISTRICT OF COLUMBIA

I recommend that the position created by H.R. 1296 be called the "Attorney General for the District of Columbia" rather than the District Attorney. The term "District Attorney" is generally used for a jurisdiction's chief prosecutor. Here, as described in the Bill, the new office would comprise all of the existing civil, family, transactional, and criminal functions of the current Attorney General and add the local prosecution function of the DC USAO. The combined civil and criminal authority is more akin to state Attorneys General than District Attorneys. States such as Alaska, Delaware and Rhode Island have Attorneys General who serve as the chief legal officer and chief prosecutor. It would thus be consistent with state practice to name this new position the Attorney General for the District of Columbia.<sup>4</sup>

D. THE MINIMUM QUALIFICATIONS CONTAINED IN H.R. 1296  
ARE MODERATE AND REASONABLE

Currently, there are no minimum qualifications for an individual to serve as the Attorney General for the District of Columbia. In fact, the D.C. Attorney General need not be admitted to the District of Columbia Bar or have ever practiced law in the District of Columbia prior to appointment.

H.R. 1296 mandates that the District Attorney be a member of the District of Columbia Bar, and not be suspended or disbarred in any jurisdiction. Local District of Columbia

<sup>4</sup> The current Attorney General for the District of Columbia is a member of the National Association of Attorneys General ("NAAG"). It would cause some confusion in roles and responsibilities if the District of Columbia's representative at NAAG was known as a "District Attorney."

law already requires every Assistant Attorney General to be a member of the District of Columbia Bar, the District's mandatory bar.<sup>5</sup> The Attorney General should have the same requirement.

I also fully support the residency and elector requirements of the Bill which would put the District of Columbia in the company of most other states which have similar requirements.<sup>6</sup>

I urge the Subcommittee to consider a minimum period of District law practice to ensure that the nominee is familiar with the District's legal system.<sup>7</sup> As the District's chief legal officer, it is imperative that the Attorney General have some knowledge of, or experience with, the District's legal system to establish credibility both within the Office, and within the court system where the District brings and defends its cases. The Bill should also allow a candidate to have experience practicing law in the District, however, as an alternative to membership in the Bar. Because of the liberal practice rules in the District of Columbia, many individuals can practice in the District – gaining valuable experience and insight into the District's legal system – without actually being a member of the District of Columbia Bar. Federal government attorneys might be so qualified, for example, even though they are technically not members of the Bar.

E. THE BILL WILL HAVE A SUBSTANTIAL FISCAL IMPACT  
ON THE DISTRICT OF COLUMBIA

Notwithstanding my support for the concept of an elected Attorney General (or District Attorney), there are substantial fiscal and operational concerns with transferring to the Attorney General the local prosecution authority of the DC USAO.

First, there is a significant cost associated with the Bill. Of the more than 300 lawyers at the DC USAO, almost 200 handle the local criminal matters from intake through appeal. Along with several dozen members of the support staff, the personnel costs alone run in the tens of millions of dollars. This expense is currently absorbed by the United States Department of Justice. Assuming that staffing levels were kept about the same, and absent some source of federal funding, the District government would be required to absorb this cost. The District of Columbia could not do so without a significant negative impact on the rest of the government's operations.

Second, the District would be required to find additional space for more than 200 new staff members in a location close to the courthouse, with additional room for the five grand juries that hear Superior Court cases and currently share space with the DC USAO. This additional space would, of course, be a significant cost for the District.

<sup>5</sup> See Title 6 D.C. Munic. Reg. § 3618.2 (2008).

<sup>6</sup> See Exhibit 2, attached hereto, State Attorneys General Powers and Responsibilities, *supra*, Chart 2-1 "Qualifications, Selection and Term of Attorneys General", which summarizes the qualifications, manner of selection, and term of the state Attorneys General.

<sup>7</sup> 13 states have explicit minimum practice requirements.

Third, since Congress passed the National Capital Revitalization and Self-Government Improvement Act of 1997, significant pieces of the District's local criminal justice system have been federally funded including the Public Defender Service, the District of Columbia Courts, and the Court Services and Offender Supervision Agency which provides both pretrial and probation services to local offenders. The Bill does not discuss the funding stream for the new office or these related entities and whether any of these significant costs would be transferred to the local government.

F. THE BILL WILL RESULT IN OPERATIONAL CHALLENGES

As noted above, the District of Columbia criminal justice system is a complex mix of federally funded agencies and local laws. Despite home rule, the District very much relies on the federal government to assist in its public safety functions. By creating a locally-elected chief prosecutor, Congress creates new challenges in the inter-relationships among the federal agencies supporting District law enforcement:

- Since Lorton Prison was closed, persons convicted of local felonies are incarcerated by the federal Bureau of Prisons in various federal penal institutions across the country. Assuming that practice continues, a locally-elected prosecutor will be making prosecution decisions affecting the federal prison population.
- The DC USAO relies on various federal agencies to assist in their investigation of local crime, including the FBI, ATF, and DEA. A locally-elected and funded prosecutor would be at a terrible disadvantage without these – or substantially similar – resources.
- Federal law enforcement agencies (such as the United States Park Police, Capitol Police, and Uniformed Division of the United States Secret Service) account for a significant number of arrests under local laws. Although these agencies should continue to have the power to make such arrests, it is not clear what the impact on these arrests might be if the prosecution is taken from the United States Attorney and given to the local Attorney General.
- The DC USAO has invested substantial resources into gathering and sharing intelligence on local crime in the District of Columbia. The system collects information about low level offenses to help develop bigger cases against more dangerous individuals and for possible prosecution in federal court. Without a significant investment in infrastructure, this information would not come to, or be able to be maintained by, the new Office.

G. THE DISTRICT OF COLUMBIA UNITED STATES ATTORNEY'S OFFICE EFFECTIVELY PROSECUTES LOCAL CRIMINAL OFFENSES

Finally, it is very important to note that my support for an independently elected chief prosecutor is not meant to suggest that the DC USAO is failing in its efforts to prosecute local crime. Quite the contrary - the men and women in that Office are among the most

talented and dedicated lawyers with whom I have had the pleasure of working. They comprise an effective and efficient office with an enormous caseload and limited resources. I have nothing but praise for their hard work and commitment to public safety.

#### **IV. CONCLUSION**

The District of Columbia would be well-served by having an independent chief legal officer as contemplated by H.R. 1296. The potential financial and operational impact of transferring local prosecution authority to the District government, however, will need to be addressed to ensure the continued public safety of the citizens of the District of Columbia.

Dated: April 24, 2008

Chart 2-1--Qualifications, Selection and Term of Attorneys General

Jurisdiction	Qualifications			Selection and Term		
	Minimum Age	Citizenship & State Residency	Bar Admission Required	Elected	Appointed by, with consent of	Term (yrs.), Limit
Alabama	25	U.S. (7 years), 5 years	No	X		4, 2 terms
Alaska	--	U.S., 1 year	No		Governor, Legislature	-- <sup>1</sup>
American Samoa	--	U.S.	No		Governor, Legislature	-- <sup>2</sup>
Arizona	25	U.S. (10 years), 5 years	5 years	X		4, 2 consecutive terms
Arkansas	21	U.S., elector <sup>2</sup> , 1 year	No	X		4, 2 terms
California	--	U.S., state	5 years	X		4, 2 terms
Colorado	25	U.S., 2 years	Yes	X		4, 2 consecutive terms
Connecticut	--	Elector <sup>3</sup>	10 years	X		4
Delaware	--	--	No	X		4
District of Columbia	--	D.C.	No		Mayor	-- <sup>2</sup>
Florida	30	U.S., elector <sup>3</sup> , 7 years	5 years	X		4, 2 terms
Georgia	25	U.S. (10 years), 4 years	7 years	X		4
Guam	--	--	No		Governor, Legislature	-- <sup>2</sup>
Hawaii	--	U.S., 1 year	Implied		Governor, Senate	-- <sup>3</sup>

Jurisdiction	Qualifications			Selection and Term		
	Minimum Age	Citizenship & State Residency	Bar Admission Required	Elected	Appointed by, with consent of	Term (yrs.), Limit
Idaho	30	U.S., 2 years	Yes	X		4
Illinois	25	U.S., 3 years	Yes	X		4
Indiana	21	State	Yes	X		4
Iowa	-	Elector <sup>3</sup>	No	X		4
Kansas	-	-	Yes	X		4
Kentucky	30	U.S., 2 years	8 years	X		4, 2 terms
Louisiana	25	U.S., elector <sup>3</sup> , 5 years	5 years	X		4
Maine	-	-	No	Legisla ture		2, 4 terms
Maryland	-	U.S., 10 years	10 years	X		4
Massachusetts	-	5 years	Yes	X		4, 2 terms
Michigan	21	Elector <sup>3</sup> , 6 months	No	X		4, 2 terms
Minnesota	21	U.S. (3 months), elector	Implied	X		4
Mississippi	-	U.S., Elector <sup>3</sup>	5 years	X		4
Missouri	-	U.S., 1 year	No	X		4
Montana	25	U.S., 2 years	5 years	X		4, 2 terms
Nebraska	-	-	No	X		4

Jurisdiction	Qualifications			Selection and Term		
	Minimum Age	Citizenship & State Residency	Bar Admission Required	Elected	Appointed by, with consent of	Term (yrs.), Limit
Nevada	25	Elector <sup>3</sup> , 2 years	No	X		4, 2 terms
New Hampshire	-	-	yes		Governor, Executive Council	4
New Jersey	-	State	Implied		Governor, Senate	4
New Mexico	30	U.S., 5 years	Yes	X		4, 2 consecutive terms
New York	30	U.S., 5 years	Implied	X		4
North Carolina	21	Elector <sup>3</sup>	Yes	X		4
North Dakota	25	Elector <sup>3</sup> , 5 years	Yes	X		4 <sup>4</sup>
N. Mariana Islands	-	-	5 years		Governor, Senate	
Ohio	18	Elector <sup>3</sup>	Implied	X		4, 2 successive terms
Oklahoma	31	U.S., elector <sup>3</sup> , 10 years	No	X		4
Oregon	18	Elector <sup>3</sup>	No	X		4
Pennsylvania	30	State, 7 years	Yes	S		4, 2 terms
Puerto Rico <sup>5</sup>	21	U.S.	Yes		Governor, Senate	- <sup>2</sup>
Rhode Island	21	Elector <sup>3</sup>	Yes	X		4, 2 consecutive terms
South Carolina	-	U.S., elector <sup>3</sup>	Implied	X		4

Jurisdiction	Qualifications			Selection and Term		
	Minimum Age	Citizenship & State Residency	Bar Admission Required	Elected	Appointed by, with consent of	Term (yrs.), Limit
South Dakota	-	State	Implied	X		4, 2 successive terms
Tennessee	-	-	Implied		Supreme Court	8
Texas	-	-	No	X		4
Utah	25	U.S., elector, 5 years	Yes	X		4
Vermont	21	U.S., elector <sup>3</sup>	Implied	X		2
Virginia	30	U.S., state, 1 year	5 years	X		4
Virgin Islands	-	U.S.	Yes		Governor, Senate	<sup>2</sup>
Washington	21	Elector <sup>3</sup>	Yes	X		4
West Virginia	25	U.S. 5 years	Yes	X		4
Wisconsin	-	U.S., elector <sup>3</sup>	Implied	X		4
Wyoming	21	Elector <sup>3</sup>	4 years		Governor	<sup>2</sup>

1. The term may run for an indefinite number of years.

2. For a definition of "elector," see the constitution of the specific state that has this requirement.

3. The term runs concurrently with that of the state Governor.

4. The term of the Attorney General beginning in 2004 was for 2 years. Thereafter, the term will be 4 years.

5. There are no statutory requirements in Puerto Rico for the office of Attorney General. Historically, qualifications related to U.S. citizenship and admission to the bar are required.

Mr. DAVIS OF ILLINOIS. Thank you very much.

I want to thank both of you gentlemen for being here and for your testimony.

Mr. Boyd, I will begin with you. In your report on H.R. 1296, you make mention of several outstanding issues with regard to the bill's proposal for an elected District Attorney. In your opinion, if enacted, what would be the most significant operational challenge posed by this legislation?

Mr. BOYD. Mr. Chairman, I think the transition, whether or not, how the U.S. Attorney's Office will cooperate, coordinate with the newly created Office of the District Attorney.

Mr. DAVIS OF ILLINOIS. Following approval of the Revitalization Act, why do you think the prosecution of local criminal cases was assigned to the U.S. Attorney's Office versus remaining with the District's Office of the Corporation Counsel?

Mr. BOYD. Again, I think it probably was a question of cost. At the time, if you recall, Mr. Chairman, the District, the Federal Government became responsible for a number of court operations and criminal justice activities, it was shifted to the Federal Government I think to the tune of approximately \$200 million or so. So I think it really was a recognition of probably some kind of savings that could be achieved.

Mr. DAVIS OF ILLINOIS. If you were trying to strengthen H.R. 1296, can you think of any way that you would seek to do that?

Mr. BOYD. I would go back to the first answer I posed, and I think it is a question of transition, whether or not there should be some clear statement in the legislation that clearly defines how the U.S. Attorney's Office would cooperate with the newly created District Attorney. Of course, there is a question of money, whether or not Congress would, as it has done with other activities of criminal justice that it supports for the District of Columbia, whether or not it would provide some funds for the transition.

Mr. DAVIS OF ILLINOIS. Thank you.

Mr. Spagnoletti, staffing and cost considerations have been highlighted as probably the greatest barrier to implementing H.R. 1296. How would you recommend dealing with the staffing and financing?

Mr. SPAGNOLETTI. It would be a complicated issue, Mr. Chairman. There are more than 300 attorneys at the U.S. Attorney's Office right now. I would venture to say that about 200 of them, plus or minus, handle local affairs, either at the trial level or at the appellate level, and then probably another several dozen who provide support services to those lawyers.

So really, not quite two-thirds of the office are handling local matters, if you will. That is a substantial number of bodies that would need to be brought over to the District of Columbia, if you were going to take them over wholesale. There are certainly ways to do it in a more strategic way, if you will. For example, the Office of the Attorney General already handles a fair number of misdemeanor cases. Indeed, they handle about 10,000 misdemeanor cases every year on their level, combined traffic and what we call D.C. offenses.

The U.S. Attorney's Office could bring over the misdemeanors first, then bring over the felonies later, you would have a grand

jury issue to be concerned about as well, because the local grand jury sits in the U.S. Attorney's Office. So there are some logistical issues that would need to be thought through, both in terms of whether or not these folks are simply going to come over, whether you would create new positions on the District side to have them filled. I think it would be, as Mr. Boyd points out, I think that would be the logistical difficulty in doing it.

Mr. DAVIS OF ILLINOIS. I come from a town where people are pretty straight up in terms of expressions. There is one expression that people have that says, you have to pay the cost to be the boss. How do you think your fellow citizens in the District would feel about some cost increase relative to financing the Office?

Mr. SPAGNOLETTI. Again, I will speak on behalf of myself as a citizen of the District of Columbia. I think you are right, you do have to "pay" in order to be the boss. It is a worthwhile venture to give the District of Columbia control over its local prosecutions to make this happen. And indeed, without knowing sort of the full picture of what Congress might decide to do at the end of the day with this, there may be some ways to reduce the overall combined costs, if you will, by using some of the existing resources and requiring the U.S. Attorney's Office to share some of the existing infrastructure with the Office of the Attorney General, if that is the direction that Congress were to go with this.

I would also point out that there are other parts of the system that remain federally funded even if this bill were to move forward: public defenders service, court services and defender supervision agency that provides pre-trial and probation services to local offenders. Those are all currently funded by the Federal Government. I would create an interesting dynamic to have a locally funded and independently elected prosecutor and have these other parts continually federally funded.

I would also point out that currently, felons on local offenses are sent into, as I am sure the chairman knows, the Federal Bureau of Prisons. You would have a locally elected prosecutor making prosecution decisions that will impact Federal prison resources at the end of the day. The financial implications of this stretch beyond the personnel costs of moving over those 200 prosecutors to the rest of the system.

But speaking on behalf of myself as a citizen of the District of Columbia, at least for this piece of it, I think it is a worthwhile investment of local resources to have local priorities govern prosecution of local offenses.

Mr. DAVIS OF ILLINOIS. I thank the gentlemen very much.

Mr. Marchant.

Mr. MARCHANT. Thank you, Mr. Chairman.

Where I come from, the District Attorney would be the county attorney in Texas, and would bring prosecution on all criminal offenses in the county for each city. So the cities only have municipal judges and local prosecutors.

So it is not exactly a model that I am familiar with, where the city itself would have the Attorney General, or the prosecuting attorney. Then we have the other overlapping jurisdiction of the U.S. Attorney. Is that how you would envision this to work on the

ground in D.C.? Would D.C. basically be like a county, like functions in Virginia?

Mr. SPAGNOLETTI. The District, of course, is unique. The Attorney General's Office for the District functions as what would be the equivalent in the States as a city attorney, the county attorney and the State Attorney General rolled into one. It handles all the civil cases, it has child support, child protection, it handles domestic violence and all the transactional work.

But the New York Corporation Counsel, what that office does is already done by the D.C. Attorney General's Office. The Attorney General for the District is a member of the National Association of Attorneys General because it really does have State-like responsibilities in its job function every day. But because we don't have any subdivisions, they all roll up into the Attorney General, including the General Counsel for all the agencies that are subordinate to the Mayor. The Attorney General has supervisory authority over them as well.

So it really, I would actually suggest that you take a look at Delaware, Rhode Island and Alaska. Delaware and Rhode Island in particular, where the State Attorney General has the typical AG functions but also serves as the State prosecutor. Because that is where we are most comparable, both in terms of size and population as well. That is what their scope of responsibility happens to be.

Mr. MARCHANT. Yes, and in Texas, the State Attorney General has no criminal prosecution at all.

Mr. SPAGNOLETTI. I think most of the State AGs do not have direct criminal prosecution for local offenses. They can either request it, they can be asked to step in. Some States share that responsibility but don't use it. Utah, for example, they share the responsibility with local prosecutors. They only step in when they think the local prosecutor is not doing what needs to be done in that case.

But they also have all the appellate authority for the State, and they will conduct, on the appeal side for criminal cases, on behalf of the entire State and all the local jurisdictions to ensure the State is speaking with one voice on important legal issues relating to criminal law. So again, I think that the District, unique in many respects, you just have to roll up the city attorneys and the county attorneys and the State AG into one office, which is why, of course, I recommend using the name in the bill as the Attorney General rather than District Attorney. Because the DA suggests criminal, Attorney General suggests the wide range of responsibilities.

Mr. MARCHANT. But per your testimony, even if you accomplish that, you would still have a Federal AG that would prosecute Federal crimes?

Mr. SPAGNOLETTI. Absolutely.

Mr. MARCHANT. Just like in a State.

Mr. SPAGNOLETTI. Absolutely.

Mr. MARCHANT. But unlike a State, all of the support agencies that are usually funded by a State or a city or a county are funded by the Federal Government here.

Mr. SPAGNOLETTI. It is a mix. The Metropolitan Police Department generates most of the cases that come in to the U.S. Attorney's Office and certainly to the Attorney General's Office. That is

locally funded. But more than most other jurisdictions, we have Federal law enforcement agencies in the District, many of them, that have local arrest powers. So we do have the Park Police, the Capitol Police, all of them making arrests under local offenses.

I think actually more significant than the arrest powers are actually the investigation side of things. Although MPD does most of the investigations, from the most serious crimes, the District is still relying substantially on the FBI, ATF, DEA for its backup work. They are working on changing that by having a local lab and doing those things. But those are parts of the puzzle that need to be considered when these things get done.

Mr. MARCHANT. So talk about the Park Service. We have had some very high profile Park Service investigations and arrests. Under this proposed legislation, would they continue to be in the Park Service? Would those authorities continue to be vested in there, or would they transfer over to the city Attorney General?

Mr. SPAGNOLETTI. What would happen is, the Park Police makes the arrest under an agreement that the Park Police has with the District of Columbia, allowing it to enforce its local laws, if you will. So if they are on park land, they need to make an arrest, they bring it in. Because the charges go two different ways, if it is an indecent exposure case, for example, that is an AG offense so they go to the local Attorney General's office. Park Police comes in to do what we call paper the case.

But if it is a possession of marijuana case, it goes to the U.S. Attorney's Office. It is just a matter of which way they walked. Did they walk to 555 Fourth Street or 441 Fourth Street? Just two different sides of the street over there. That would be the difference.

I actually would suggest to you that the bill puts the District on the same footing as other jurisdictions when it comes to the decision about local versus Federal prosecutions. Right now, when a case walks in the door at the U.S. Attorney's Office, there is not necessarily any kind of a discussion that goes on between the local authorities and the Federal authorities about whether this case is better placed in the Federal courthouse or in the Superior courthouse. Because the U.S. Attorney has the complete authority to make the decision about which direction that case goes.

But in every other State in the country, the local prosecutor and the U.S. Attorney have to have a discussion about what makes the most sense. They have to cooperate that way. And although I will say that in recent years, the U.S. Attorneys who have held the position have really made efforts to reach out to the local population, the Attorney General's Office and the council, it does allow them to basically keep the matters entirely within their own office without necessarily sharing information.

I have to say that I have had experiences as the Attorney General where I needed to do something on the local level, but the U.S. Attorney's Office had the information in their hands and they didn't share it with me. Because they thought it was more important to do whatever they were going to do on the Federal side than it was for us to do on the local side. There was no conversation, because they have the entire ball of wax, if you will, in their hands.

So while I say generally the communication is good, but by placing all the local and all of the Federal matters into the U.S. Attor-

ney's hands, there is no discussion, because the U.S. Attorney makes those decisions.

Mr. MARCHANT. And there is no ability on the part of the U.S. Attorney's Office to give that authority to the city, does it have the authority to cede that power to the city now?

Mr. SPAGNOLETTI. In some small circumstances where there are some technical things in the Code, but yes, there are some circumstances where we have cross-designated assistant U.S. Attorneys as Attorneys General to try to minimize the problem I discussed in my testimony. For example, someone gets arrested in the act of prostitution, and there is an indecent exposure and a prostitution charge. Indecent exposure is an AG charge, prostitution is a U.S. Attorney's Office charge. For years and years, it would be two separate cases, two separate jackets, two separate judges marching those cases there.

When Ken Weinstein was the U.S. Attorney and I was the Attorney General, we entered into a written agreement that on certain low level offenses we would bring those into one court or the other and allow the respective assistants to prosecute those matters, to try to minimize what was going on with the duplication of cases and reduce the number. But that exists only at the lowest level because of what the power of the AG has right now in terms of its criminal authority.

Mr. MARCHANT. Do either of you consider yourselves to be Constitutional lawyers?

Mr. BOYD. I am certainly not. [Laughter.]

Mr. MARCHANT. Mr. Chairman, if there is another hearing on this, I would request that we have a Constitutional lawyer to get some perspective on the Constitution as it is written and the opinion of the effects it would have on the Constitutional intent of this Federal zone, this Federal State and what a change like this may or may not have as far as Constitutionally. Thank you.

Mr. DAVIS OF ILLINOIS. Thank you very much, Mr. Marchant. We will make sure that happens.

Ms. Norton.

Ms. NORTON. Thank you very much, Mr. Chairman. I hope that you will make available, if you have not, the CRS report on this matter, which did not raise Constitutional questions. I can understand the ranking member's interest in that. The fact is, the only reason the District has a U.S. Attorney is that in essence, there was no local jurisdiction here. There was nobody else to prosecute crimes for 150 years. We were denied Home Rule. Thus, somebody had to do it. You have the U.S. Attorney doing it.

It has not been suggested that we couldn't do for the U.S. Attorney the same thing we do, for the U.S. Attorney, creating a DA, Attorney General, whatever you want to call it, the same way we have done for the Mayor. There wasn't any Mayor, either. There wasn't any City Council either. We passed the Home Rule Act, Federal jurisdiction. We have delegated the executive authority to the Mayor, legislative authority through the Council, and we can delegate the Authority to prosecute local crimes, in my judgment. And I do speak from some background as a Constitutional lawyer. I believe we could delegate that authority from the U.S. Attorney to an elected person.

Both of you, you, Mr. Boyd, you, Mr. Spagnoletti, raise the notion of this nomenclature, which I think could be quite confusing, and I would hate the bill to get all messed up with nomenclature. The fact is, Mr. Spagnoletti, you were a classic Attorney General before. That is to say, normally U.S. Attorneys, the Attorney General does not have major criminal jurisdiction. So you converted the name which, as a native Washingtonian, I can tell you has always been Corporation Counsel, and also is a word used in some jurisdictions, you at least were using a term which was conversant with the duties of the office.

And Mr. Boyd raises in his testimony the notion that we do not call for the abolition of the role of the Attorney General of the District of Columbia. We don't in this bill, because we are writing a Home Rule bill. If the District wants to do that, that is for it to do.

But Mr. Spagnoletti implies that because Delaware does in fact apparently, probably to save time and money, it puts both functions in the same place, implies that you really could have them both in the same place. I want to ask you, Mr. Spagnoletti, I want to ask you whether or not, given the nature of criminal prosecutions here, in a big city, whether that for you is an important point, to have an office that covers civil and criminal matters in the same office, and if so, for what reason?

MR. SPAGNOLETTI. As I read the bill, because it takes the D.C. Code and changes the name, if you will, of the current Attorney General, actually I think it still reads Corporation Counsel in the bill, but the Attorney General, and sort of rolls them into one, my reading of the bill actually has virtually all the powers of the current Attorney General being merged there. So I thought actually it was more the intent of the bill to have those things all together.

But certainly, I can see a model where you simply take the criminal prosecution from the Attorney General's Office, the criminal prosecution from the U.S. Attorney's Office and roll that together into an elected DA and severing the rest of it out to an Attorney General for the District.

MS. NORTON. You are right, the Counsel would have to make that decision. The one issue that would bother me about that is the issue of the independence of the DA. This is somebody who ought to be able to prosecute a mayor or city council members. This is somebody who the Mayor should have no control over, that is why the people of the District of Columbia wants them elected. I don't want to suggest we want them to prosecute our public officials, but the independence for the, this is the only official that would be as independent as members of the Council, as independent as the Mayor. It is not just because we want another elected official.

The reason I raise this is when you imply, and we would have to look at what the Delaware experience was, is that it has been a matter of some concern in the District now that there is confusion as to whether or not, and I can understand the confusion, I think it is structural confusion, even within an office that doesn't even have major criminal jurisdiction as to whether or not the Attorney General is essentially an independent officer or whether or not he is like every other appointee of the Mayor.

This confusion I think is harmful. But it is harmful because of the structure that Congress has set up, giving the Attorney General certain roles, I am sorry, given where, and this was initially set up by the Congress, but where the Council seems to be contemplating trying to clarify just how independent even the Attorney General is. Well, the controversy has arisen about independence within an agency that everybody knows, and nobody has suggested, at least yet, should be elected, should be appointed.

Then I raise this only out of this discussion, wonder whether or not we would be defeating the independence of this official by mixing with the criminal prosecutions, that is responsible for criminal prosecutions, his responsibility for some matters where he must be directed by the Mayor and then by the City Council.

Mr. SPAGNOLETTI. To roll together everything would be a challenge, to say the least, for the Attorney General to keep going. But it is not unusual, and it is not unusual for—

Ms. NORTON. How is independence preserved? What kind of wall preserves the independence of the Attorney General? Is he elected?

Mr. SPAGNOLETTI. It is the election, yes. I guess what I contemplated in reading your bill is that it would be the elected Attorney General, have all those authorities that ran to the former Attorney General as well as the prosecution authority, the local prosecution authority from the U.S. Attorney.

Ms. NORTON. I am speaking functionally, Mr. Spagnoletti. Yes, you give him the authority, functionally, he is responsible to the executive for executive functions. He is responsible to no man for criminal prosecutions. So I am just suggesting without knowing, because I think this matter would be left, obviously, to the Counsel, that the notion that it all hangs together and if he is elected it will work out all right, even though his responsibilities to the executive are clear, is something I think would need investigation.

Mr. SPAGNOLETTI. I guess I would say two things. One is that the challenge that you point out is one that is experienced by every State Attorney General across the county.

Ms. NORTON. Yes, I need to know what it is.

Mr. SPAGNOLETTI. For every matter, the question is always, who is the client. The person himself as the Attorney General is protected by the election process. So at least in terms of your job not being on the line when you make a decision, the election, at least, the election process takes care of that.

But then for every matter, and this is true of every attorney general, for every matter, who the client is changes where your line of responsibility, like every lawyer, happens. In a criminal case, you are beholden to the people as a whole, and you can't be directed or influenced by other members of the executive, legislative or judicial branch in how you do those functions.

But in civil matters, you do take your direction, and it is true of every Attorney General—

Ms. NORTON. Mr. Spagnoletti, I don't want to press this, although the lawyer in me wants to. I mean, we have child abuse matters, you have matters that move that, the line, and it was so clearly drawn, there would be a whole lot less litigation in this country. And I think the, and I raise it only because it is an interesting legal question and because as Mr. Boyd raised, you still have

the Attorney General, and I responded to him the reason is that for the District to decide.

But I just want to leave a notion that I think wrapping it up is something that raises issues that they would have to sort out. That is the only reason I am pressing it, not to want to solve it.

But I do want to ask you about your dual experience. It seems to me to be invaluable to us. Because you were responsible for just the kind of cases that I think could cause confusion in an office that has the Attorney General and the DA in the same office, because you were responsible for all criminal cases in the U.S. Attorney's Office as its chief of the Sex Offense and Domestic Violence Section for prosecuting criminal cases involving sexual abuse of adults and children and intra-family offenses, etc.

Now, did your experience lead you to believe that the cases that you prosecuted could have been easily, more easily, perhaps handled by an official who was elected by the people of the District of Columbia who had to live in the District of Columbia?

Mr. SPAGNOLETTI. I certainly think that could have been handled just as easily, yes.

Ms. NORTON. Was there any advantage to prosecuting sexual abuse cases involving children and families in a U.S. Attorney's Office?

Mr. SPAGNOLETTI. But for the resources that were available to us, I think that was really the only difference.

Ms. NORTON. The notion—do you have any experience in bringing families to the U.S. Attorney for such prosecutions, families which may still be together but where you are prosecuting people for sexual abuse and the like? Here it has become what looks like a Federal offense and you are dealing with the Feds. Must have been a serious crime or it wouldn't have been prosecuted by you. But I am wondering whether or not that even facilitates criminal prosecution at the Federal level, even facilitates what we all hope for when even serious family matters develop.

Mr. SPAGNOLETTI. I guess I would say two things. One is, it does require, every time someone walks into the office, an explanation of why they are coming to the U.S. Attorney's Office and the fact that it is not——

Ms. NORTON. Did you have any social workers to deal with such families in your office?

Mr. SPAGNOLETTI. In the U.S. Attorney's Office?

Ms. NORTON. Yes.

Mr. SPAGNOLETTI. There were victim witness advocates that——

Ms. NORTON. Volunteers?

Mr. SPAGNOLETTI. No, actually employees. We started the program in 1996.

Ms. NORTON. Excellent.

Mr. SPAGNOLETTI. So there were victim witness advocates who worked with those families. But again, they were Federal employees, so it required another step to hook them up with local services and local processes along the way.

I would also mention that, I don't want anything to think that, when cases come in under the Sex Offense and Domestic Violence side, which is in the Superior Court division in the U.S. Attorney's Office, it was extremely rare, very, very rare, that those cases ever

made it over to the Federal side. There was a division in the office that, I mean, I have not been there in a few years, but there was a fairly significant division between the Superior Court side and what they called the criminal division. So it is not as though the cases are, once they track, they tend to track one direction or the other. And sex offense, domestic violence, child maltreatment cases almost always tracked down Superior Court side.

Ms. NORTON. Of course, it must have been very serious offenses for you to have had jurisdiction at all.

Let's go back to the testimony of Mr. Boyd. You mentioned a figure over \$50 million for the cost. What was that figure?

Mr. BOYD. It was \$57 million, that was an estimate by the CFO in 2003. I know that some have challenged that estimate.

Ms. NORTON. Well, I don't challenge it. I don't challenge it, because I think one has to look straight in the face of the costs and I will say that when the Council went to do its bill, I questioned them about whether or not, before I put my bill through, they understood that this was a transfer of costs to the District of Columbia, that the District of Columbia had never borne. I was told by those who know best in the Council they were prepared for that cost.

In your judgment, Mr. Spagnoletti, I would have to ask you about that. Your office, the Attorney General's Office, has often, this is not, I speak not unto you, Mr. Spagnoletti, but for years been seen as an office that was not splendidly funded. In fact, an office that has had some difficulty with the courts. Do you believe that the, in your judgment having been an Attorney General, that the city would in fact take on the cost, no matter what it was, for the new person, Attorney General or DA, and all that goes with that person and that office?

Mr. SPAGNOLETTI. I would assume that would be the case, given the combination of referendum and action by the Council. I think you are correct in your analysis of where the Office of Corporation Counsel was. I would say that within the past, maybe this is a little self-serving, I realize, but I do think it has made significant headway moving forward in terms of its technology and the support that it has to do its job. I think the court has recognized that certainly in recent years.

So I think a measured transfer, and again, I am assuming the District has bought into this, that is, the elected officials have bought into this who are going to control and make budgetary decisions, since they have—

Ms. NORTON. Do you think the city is capable of handling this \$57 million or as it goes up cost?

Mr. SPAGNOLETTI. I would assume so, yes.

Ms. NORTON. We have a budget here, what, \$3 billion locally? I don't know if that \$6 million will count everything.

Mr. BOYD. Ms. Norton, if I could interrupt for a minute, we did look at a couple of cities of comparable size to the District or counties. Baltimore, for instance, it is State's Attorneys Office, budgeted about \$31 million.

Ms. NORTON. That is the office of the local DA?

Mr. BOYD. Right, that is the local DA. The King County Prosecuting Attorney's Office, that is where the city of Seattle is located, had a budget of about \$53 million.

Ms. NORTON. Well, this office is, although if you talk to the U.S. Attorney, particularly in the last few years, their own funding has suffered markedly. Nevertheless, the U.S. Attorney's Offices, I should say, are known for splendid hires, and so much so they go on to be, as Mr. Spagnoletti progressed, if you could consider that, or to be judges themselves. They are of very high quality. There recently has been a huge outcry about the Attorney General scandal here, because they were considered always although appointed by the President, they were considered, and frankly, it had a long record of being apolitical, going where they have to go.

You say, Mr. Spagnoletti, there are more than 300 lawyers, this is on page 6 of your testimony, in the U.S. Attorney's Office. This is really stunning. Everybody should listen to this, 200 of them prosecute local criminal matters. The people of the United States are essentially paying for the local DA or Attorney General.

Do you believe, having been in both offices, Mr. Spagnoletti, that the U.S. Attorney left only with Federal jurisdiction would have ample authority to have a U.S. Attorney for the District of Columbia here and move forward?

Mr. SPAGNOLETTI. Absolutely. There are plenty of cases, in fact, I would say that one of the reasons the number on the Superior Court side is so high is that cases that would otherwise be brought federally are being directed locally for operational form, shopping, if you will, types of reasons. It in no way suggests that there is a lack of cases, a lack of work or a lack of authority. In fact, quite the opposite. I think there is plenty of work that needs to be done on the Federal side by the U.S. Attorney side from what would normally be local offenses.

Ms. NORTON. For the record, I would like to clarify this notion. It is true that you have two sets of, you have more Federal police here than elsewhere, this is Federal jurisdiction. And you have the Park Police, I think alone, has city-wide jurisdiction along with the D.C., and you know what? This Member, who loves the Park Police, would strive to keep it that way. Because what they do is arrest people, some of our biggest drug busts over the years have come from Park Police. Why? Because much of their patrol is in and around parks. Many of those parks are in high crime neighborhoods, across the Anacostia, Anacostia Park, Fort Dupont. So they have been very helpful to us.

The fact that the Park Police, or for that matter the Capitol Police, can make some arrests, why is that any different from what the Park Police would do in Wyoming or what Federal police do elsewhere? If they make an arrest and, if they are making an arrest under delegated jurisdiction as the Park Police is, does, then of course it seems to me there is a long history of how to do that. But suppose you have other Federal police who make an arrest. Let us say in other jurisdictions, which have normal relationships with Federal agencies, let me ask a question, how would those Federal officials from those agencies deal with the local DA or the local authorities?

Mr. SPAGNOLETTI. As I mentioned before, I would expect that the agreements would all continue for enforcement of local laws. There would be the same types of arrests that there are now.

What could happen, I suppose, is that intervening step if the local prosecution authority was all moved over to a DA or an attorney general, where if there was an arrest on park land, they might very well run it past the U.S. Attorney to see if they wanted to do it locally, much in the same way the Eastern District of Virginia does, before they send it off to the local officials.

But again, I would expect that with cooperation all that would be worked out in advance, so that folks would know, if you pick up a marijuana misdemeanor case in Rock Creek Park, they are going to take it there as opposed to here on the mall here as opposed to there.

Ms. NORTON. What you are saying is important, I am really trying to discern whether there would be any difference here than what occurs generally throughout the United States when there is mixed jurisdiction or when, for example, a rape occurs in a park where the rape is, you have to decide who is going to prosecute it, local, or whether you are going to bring it through the U.S. Attorney.

Mr. SPAGNOLETTI. Well, actually, I think it is the same as other States, and actually a little bit easier in the District for that kind of coordination. Because we only have one court of general jurisdiction, and you don't have Federal authorities having to go to different counties and district courts and circuit courts and the rest.

Ms. NORTON. You raise some operational challenges. I appreciate your raising them in your testimony. But I wonder if they also don't track what happens in local jurisdictions. The Federal agency, the mention that the Attorney General's Office relies on the FBI, ATF and DEA. Now, because he is a Federal official, he probably has far greater access, more inclined to go to the FBI. If you go to Prince George's County, they will tell you the FBI was deeply involved in police matters there and in helping the State's Attorney there with respect to some police abuse matters that occurred there. Doesn't every jurisdiction cooperate with the ATF and the DEA without even if the matter is a local matter?

Mr. SPAGNOLETTI. Yes. However, the one difference in the District is that we rely on some of those agencies for very routine cases as well. Whereas other States have local labs that will do it, for example, the DEA doing all of the chemical analysis on our drug cases.

Ms. NORTON. That is because we don't have a lab.

Mr. SPAGNOLETTI. That is right. I just point out, that is really the issue, is that it has allowed the District to move slowly on developing a lab, because it has relied so heavily on the FBI, DEA and ATF for very routine kinds of analyses that are done by States or local jurisdictions in other places. But I think you are correct, there is no difference in bigger matters where you would expect that kind of cooperation from the FBI, ATF and DEA.

Ms. NORTON. I would also like to have your view on the notion that some of our functions might remain Federal functions, at least for cost purposes: public defender, appointed judges, our prisoners who are in the Bureau of Prisons. These people work under the

D.C. Code. Has that caused any confusion that the public defender is funded—that is what it is—funded by the Federal Government, that the judges are funded, and for that matter appointed by the President of the United States, or that our prisoners are in Federal prisons? Has that caused any confusion between local and Federal jurisdiction?

Mr. SPAGNOLETTI. Operationally, no.

Ms. NORTON. I just want to make sure that we understand these problems, so that we can know about them in advance. So they won't be raised as reasons to oppose the bill.

Most, if I may say so, most of what we get in excess of what you might expect from Federal agencies comes because of location and because they have a Federal U.S. Attorney and so you get some little increment of resources. That is what D.C. would have to give up and be willing to give up. Now, it would still have the same access that any State has to the FBI, the ATF, the DEA and the rest of it.

But you mention with the best example, and by the way, that would remain, the best example is of course the lab, the forensic lab. And we are building a new forensic lab. But until we have built one there is no doubt in my mind that if there was a local DA or Attorney General, that the Federal Government would continue the present arrangement. After all, we worked out an arrangement with them that respects the local jurisdiction.

Let me ask you, finally, Mr. Spagnoletti, about the jurisdiction of the U.S. Attorney's Office with the ability to charge some 16 and 17 year olds as adults. You mentioned this in your testimony. How are children incarcerated if these children are charged as adults, essentially by the U.S. Attorney and not by, not elsewhere?

Mr. SPAGNOLETTI. They are incarcerated in the adult system. So they would be placed in whatever facility, but of course, probably segregated as appropriate, given their age or vulnerabilities. But once they are prosecuted by the U.S. Attorney's Office, they go that direction.

Ms. NORTON. Once they are charged, while they are awaiting trial, what happens to these children?

Mr. SPAGNOLETTI. They are held as adults. Again, maybe segregated along the way.

Ms. NORTON. Where would be held? Would they be sent to OPO?

Mr. SPAGNOLETTI. No.

Ms. NORTON. When you are charged with a Federal crime, it is pretty serious, you did something as a 16 or 17 year old that meant you are not in juvenile court, or Superior Court.

Mr. SPAGNOLETTI. Right. As I understand it, they would be held, for example, pending trial, in D.C. jail but away from either the sentenced folks or I guess the more serious offenders. But that is where they would be. They would not be mixed in with the juveniles, because they wouldn't be considered juveniles.

Ms. NORTON. Well, I suppose that is no different than if we had a DA, they would have to be held somewhere.

Mr. SPAGNOLETTI. That is correct.

Ms. NORTON. Finally, do you have anything to say, Mr. Spagnoletti, about the quality of the U.S. Attorney's Office and

whether we would get that same quality of attorney if we in fact had a local DA?

Mr. SPAGNOLETTI. I appreciate your asking that question, because I do want to put on the record that everything I have said about my support for the locally elected DA is not meant to demean or suggest in any way that the U.S. Attorney's Office is not doing a fine job with local offenses. Because I really believe that they are. Having seen local prosecution across the country in lots of different courthouses, I actually think they are among the best in the country in terms of handling local prosecution.

That being said, I have no reason to doubt that with an orderly transition and properly funded, that same level of work couldn't be done by a local DA or Attorney General, whatever it turns out to be. I had the pleasure of interviewing and hiring tons of folks at the Attorney General's Office who wanted to come to the District and work at the local AG's office on the smaller matters, juvenile delinquency cases and folks who I think could have done and will do just as fine a job as folks we might hire from the U.S. Attorney's Office.

I would be remiss if I didn't put on the record that at least one of the issues that is at play here is that the U.S. Attorney for the District of Columbia has enjoyed a feeder system through the local offenses, and that is that people come to that office oftentimes because they want to be in the U.S. Attorney's Office, but they want to do trial work.

You don't get a lot of trial work on the Federal side, you get a lot of trial work on the Superior Court side. It is a rotation system and you go there and they put you in appellate for a little while and then they put you in misdemeanors for a while, then felones and grand jury and they move you on. So that by the time you get to the criminal section, the Federal District Court side, you have a number of years and experience under your belt, different than any other U.S. Attorney's Office in the country, where they hire you and you immediately start working on Federal offenses.

So that is part of what exists in our system. I am not saying that is a good or a bad thing. I am just saying that he has enjoyed, he the U.S. Attorney or she the U.S. Attorney, has enjoyed that feeder system. But basically, in my opinion, using local offenses as training grounds for what the U.S. Attorney was meant to do, which is prosecute Federal crime.

So moving those functions to a local D.A. or a local U.S. Attorney makes them the prime job. It makes that as the be all and end all, to do that and to hire people who didn't come to do something else, but to prosecute local offenses, career folks who want to do homicides and sex offenses and family violence and quality of life crimes. So you may get a different dynamic, but I am confident, equally capable folks who want to be there, who can do qualify work for the District of Columbia.

Ms. NORTON. Thank you very much. I thank both of you, because I think it has edified the record. And thank you, Mr. Chairman.

Mr. DAVIS OF ILLINOIS. Thank you very much, Ms. Norton.

Let me just ask you, Mr. Boyd, in conducting your research, did you uncover any degree of interaction among the different relevant agencies of Federal or local government? In other words, the inter-

action between and cooperation of the U.S. Attorney's Office, District of Columbia, District Office of the Attorney General, other local D.C. entities?

Mr. BOYD. I am sorry, Mr. Chairman, I didn't quite understand the question.

Mr. DAVIS OF ILLINOIS. The interaction between the different levels of government, local and Federal, the spirit of cooperation that may exist between D.C. officials and Federal officials.

Mr. BOYD. We really didn't look closely at that, but I am aware that there is a criminal justice coordinating committee where all these officials are members, the U.S. Attorney serves as a member of that commission as well as the Mayor, the Attorney General. So there is that kind of cooperation, at least there is that vehicle. But we didn't quite look closely at that. We will be happy to look into it.

Mr. DAVIS OF ILLINOIS. Thank you.

Mr. Marchant, do you have any additional questions?

Mr. MARCHANT. No, thank you, Mr. Chairman.

Mr. DAVIS OF ILLINOIS. Gentlemen, thank you very much. We appreciate your being with us and this hearing is adjourned.

[Whereupon, at 11:45 a.m., the subcommittee was adjourned.]

